

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT TRUST, Plaintiff,

vs.

MICHAEL JOHANNNS, UNITED STATES

DEPARTMENT OF AGRICULTURE, and

MONTE FLETCHER,

RICHARD KILMURRY,

BONNY KILMURRY,

HILGER BROTHERS PARTNERSHIP,

GARY A. BURIVAL,

JOYCE A. BURIVAL,

And EDWIN BURIVAL

Defendants.

Appeal from the District Court of Nebraska 8:05

cv 49,

Page i, appendix A1

Case: 07-1284 9-4-08 and 10-31-08 Addendum A1

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 31, 2008

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Case: 07-1284 9-4-08 Addendum A2

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 07-1284

James Widtfeldt, James Widtfeldt Trust,
Plaintiffs, Appellants

v.

Michael Johanns, et al

Appeal from District of Nebraska - Omaha
(8:05 cv00049-JFB)

JUDGMENT

This appeal from the United States District Court was submitted on the record for the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in
Page i of A2 appendix

Case: 07-1284 9-4-08 Addendum A2

accordance with the opinion of the court.

September 4, 2008.

Order Entered in Accordance with

Opinion:

Clerk, U.S. Court of Appeals, Eighth

Circuit.

/s/ Michael E. Gans.

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
NEBRASKA

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT TRUST, Plaintiff,
vs.

MICHAEL JOHANNNS, UNITED STATES
DEPARTMENT OF AGRICULTURE, and
MONTE FLETCHER,
RICHARD KILMURRY,
BONNY KILMURRY,
HILGER BROTHERS PARTNERSHIP,
GARY A. BURIVAL,
JOYCE A. BURIVAL,
And EDWIN BURIVAL
Defendants.

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8:05 cv 49, JUDGMENT

In accordance with the Memorandum and Order entered on this date, it is hereby ORDERED, ADJUDGED, AND DECREED that summary judgment is granted in favor of defendants and against plaintiff.

Plaintiff's amended complaint is dismissed with prejudice.

Dated this 11th day of December 2006.

BY THE COURT:

S/Joseph Bataillon

Chief United States District Judge.

Tobacco WSJ article Addendum A4

Nicotine Buzz -- US Farmers Rediscover
the Allure of Tobacco -- End of Subsidy
System Brings Higher Profits; Lessons for
Mr. Barbre, by Lauren Etter, page A1 in
September 18, 2007 Wall Street Journal,
hereinafter tobacco.

Paragraph 5, page A1 of Wall Street Journal:
Second sentence:

Even factoring in higher labor and other
costs, he's netting up to \$1,800 an acre
from his 150 acres of tobacco, compared
with \$250 an acre from his corn.

Paragraph 7, page A13 of Wall Street
Journal

"Mr. Barbre's profitable tobacco business
adds a wrinkle to the debate over the farm

Page i, Appendix A4

Tobacco WSJ article Addendum A4

bill Congress is preparing to take up.
Many farmers say that without the system
of subsidies for commodities like corn,
cotton and soybeans, they'd be at risk of
going under. But critics say the system
fosters inefficiency, distorts international
trade and supports mainly the wealthiest
farmers. Now these critics can point to
tobacco as evidence that subsidies are
unnecessary."

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Date Filed: 12/11/2006 Page 1 Addn A5

IN THE UNITED STATES DISTRICT
COURT

FOR THE DISTRICT OF NEBRASKA

JAMES WIDTFELDT, and JAMES

WIDTFELDT TRUST,

Plaintiffs,

v.

MICHAEL JOHANNNS, UNITED

STATES DEPARTMENT OF

AGRICULTURE, MONTE FLETCHER,

RICHARD KILMURRY, BONNY

KILMURRY, HILGER BROTHERS

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Date Filed: 12/11/2006 Page 2 Addn A5

PARTNERSHIP, GARY A. BURIVAL,

JOYCE A. BURIVAL, and EDWIN

BURIVAL,

Defendants.

8:05CV49

MEMORANDUM AND ORDER

Plaintiff, James Widtfeldt, filed this action seeking judicial review of a final agency determination by the National Appeals Division (NAD) of the United States Department of Agriculture (USDA)

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concerning a determination by the Farm Services Agency (FSA) that plaintiff owes the Commodity Credit Corporation (CCC) approximately \$29,106, plus interest in overpayments. Plaintiff received program payments for crop years 2000 and 2001, but was later determined ineligible under program requirements. The parties have filed cross-motions for summary judgment based on the Administrative Record of the United States Department of Agriculture. (Filing Nos. 33 and 41.) For the reasons

stated below, the court finds that the National Appeals Division of the United States Department of Agriculture did not abuse its discretion.

FACTUAL BACKGROUND

The USDA is responsible for administering all statutes and regulations pertaining to the CCC, the Production Flexibility Program ("PFP"), and the FSA. The PFP was created as part of the Agricultural Market Transition Act Title I of the Federal Agriculture Improvement and Reform Act

of 1996 to provide producers of certain crops with declining, yearly monetary assistance (referred to as production flexibility payments) over a period of seven years while phasing out traditional commodity price supports. *See generally* Christopher R. Kelley, *Recent Federal Farm Program Developments*, 4 Drake J. Agric. L. 93, 99 (1999). Accordingly, the CCC entered into seven-year contracts with eligible producers in return for annual market assistance payments. *See* 7 U.S.C.

§§ 7211-7212 (2002). & 7 C.F.R. §

1412.201(a) (2002). The PFP is administered under the general supervision of the CCC and carried out by state, county, or area FSA committees. Enrollment in the PFP was limited to a relatively short time period between April 4 and August 1, 1996. *See* 7 U.S.C. § 7212(a)(1) & (2). The Market Loss Assistance ("MLA") Program was first enacted in 1998 and its purpose was to supplement the PFP payments producers received. 7 U.S.C. § 1421.

Program payments were linked to the
eligibility for Production Flexibility

Contracts (PFC). 7 U.S.C. § 1421. Plaintiff

James Widtfeldt owns and leases farmland

in Holt County, Nebraska. On May 2, 2000,

plaintiff executed a Form CCC-478 PFC

where he identified himself as replacing

Gusteva Widtfeldt as the producer on

Farm Serial Number 3628 (FSN 3628).

(Administrative Record at 176, 181.) In his

designation of program payments, plaintiff

claimed 100 percent interest in the FSN

3628 Production Flexibility acres for both the 2000 and 2001 crop years. Between May 25, 2001, and August 21, 2001, plaintiff received around \$29,106 in PFC and MLA payments. *Id.* at 160.

In 2000 and 2001, plaintiff, as trustee for the Albert Widtfeldt Trust, entered into three leases for FSN 3628. The first set of leases for the years 2000 and 2001 was with the Hilger Brother Partnership, the leases were signed only by the Hilger Brothers Partnership. (Administrative Record at 68-

71). Under the terms of these leases, the Hilger Brothers Partnership agreed to pay plaintiff \$10,000 annually while plaintiff paid for the maintenance of the irrigation system. (Administrative Record at 68-71, Testimony from James Widtfeldt on hearing Tapes 1 and 2.) The leases also stated that plaintiff would retain all government payments from the property. (Administrative Record at 69 and 71.)

Next, plaintiff entered into a lease with Richard and Bonnie Kilmurry for 2001 and

2002. Under the terms of this lease, the Kilmurrays paid \$24,500 annually to plaintiff. (Administrative Record at 72-74.)

The Kilmurrays were also responsible for the farm operating costs. *Id.* The lease stated that plaintiff would retain all government payments from the property. *Id.* at 73-74. This lease was signed by both parties. *Id.* The final lease was with Gary, Joyce and Edwin Burival. The parties entered into two separate but identical leases for the years 2000 and 2001.

(Administrative Record at 62-67.) The lease for the year 2000 was not signed by either parties, and the lease for 2001 was signed only by the Burivals. (Administrative Record 65, 67.) Under the terms of this lease, the Burivals agreed to pay plaintiff \$11,000 annually. The Burivals paid for all of the operating costs, while plaintiff paid for maintenance costs on the irrigation equipment and purchased a new irrigation system. (Administrative Record at 379, 519, testimony from James Widtfeldt on

Hearing Tapes 2 and 3.) This lease also stated that plaintiff was to receive all government payments on the leased properties. (Administrative Record at 63, 66.) On November 19, 2003, the FSA's County Executive Director requested that plaintiff provide evidence to show that he was eligible to earn the PFC and MLA payments for crop years 2000 and 2001. (Administrative Record at 172.) A hearing was held to determine plaintiff's eligibility, and on January 28, 2004, FSA

notified plaintiff that it determined he was ineligible for the 2000 and 2001 PFC and MLA payments and requested that the payments be refunded. (Administrative Record at 160.) This determination was made based on the FSA's conclusion that plaintiff lacked the risk in the crop production on his farm. On February 23, 2004, plaintiff requested FSA to reconsider its decision. It is of note that in plaintiff's complaint he makes reference to program payments for the years 2002-

2006; however, plaintiff has already
appealed a decision challenging his 2002
program payments to the District Court
and this claim was dismissed with
prejudice. (Administrative Record at 452-
460.) Further, plaintiff did not exhaust his
administrative remedies with respect to
any program payments for the years 2003-
2006. Therefore, this court will only
address the decision regarding the 2000
and 2001 overpayments. (Administrative
Record at 261.) On July 30, 2004, FSA

affirmed its January 28, 2004, decision.

(Administrative Record at 472.) On August 10, 2004, plaintiff appealed the FSA's decision to the National Appeals Division of the United States Department of Agriculture arguing that plaintiff shared in the risk of the production of the crops in 2000 and 2001. The NAD Hearing Officer upheld the FSA's determination.

(Administrative Record at 473.) On November 15, 2004, plaintiff filed a request for a Director Review of the NAD's

Hearing Officer's determination issued on October 29, 2004, and requested equitable relief. (Administrative Record at 485.) In its review the Director framed the issue before him as whether the FSA complied with its regulations when it determined that appellants were required to refund PFC and MLA payments, explaining that it needed to answer the specific questions: (1) did plaintiff's lease agreements with Third Parties cause appellants to be ineligible for 2000 and 2001 PFC and MLA payments;

and (2) have appellants established a basis for equitable relief. (Administrative Record at 471.) After reviewing the applicable regulations and relevant facts, the Director concluded that the FSA's determination that plaintiff was ineligible for program payments both because the leases between plaintiff and the third parties were cash leases and because there was no basis for equitable relief were not erroneous. The plaintiff now seeks review of this decision.

DISCUSSION

A. Jurisdiction

Based on the foregoing discussion, the court finds that plaintiff, Widtfeldt, has exhausted his administrative remedies. See 7 U.S.C. § 6912(e). This court has jurisdiction pursuant to 28 U.S.C. § 1331, 7 U.S.C. § 6999, and 28 U.S.C. § 2201. 1

B. Standard of Review

1. Summary Judgment

Summary judgment is proper if no disputed issues of material fact exist and

the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c);

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The court must view the

evidence and the inferences which may be reasonably drawn from the evidence in the light most favorable to the nonmoving

party. *Matsushita Elec. Indus. Co. v. Zenith*

Radio Corp., 475 U.S. 574, 587 (1986). Where

unresolved issues are primarily legal as

opposed to factual, summary judgment is

particularly appropriate. *Mansker v. TMG*

Life Ins. Co., 54 F.3d 1322, 1326 (8th Cir.

1995). On a motion for summary judgment, the question before the court is whether the record, when viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c); *Mansker v. TMG Life Ins. Co.*, 54 F.3d at 1326.

2. Administrative Procedure Act

The decision by the NAD Director is

reviewed under the Administrative

Procedure Act (APA). *See Lane v. United*

States Department of Agriculture, 120 F.3d

106, 108-09 (8th Cir. 1997). The APA, at 5

U.S.C. § 706, sets out the scope of review:

To the extent necessary to decision and

when presented, the reviewing court shall

decide all relevant questions of law,

interpret constitutional and statutory

provisions, and determine the meaning or

applicability of the terms of an agency

action. The reviewing court shall-(1)

compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. Agency action is arbitrary and capricious only where it is not supportable on any rational basis. *First Nat'l Bank of Fayetteville v. Smith*, 508 F.2d 1371, 1376 (8th Cir. 1974), cert. denied, 421 U.S. 930 (1975); *Churchill*

Truck Lines, Inc. v. United States, 624 F.2d

63, 65 (8th Cir. 1980). "The court is not

empowered to substitute its judgment for

that of the agency." *Citizens to Preserve*

Overton Park v. Volpe, 401 U.S. 402, 416

(1971). In making the foregoing

determinations, the court shall review the

whole record or those parts of it cited by a

party, and due account shall be taken of

the rule of prejudicial error.

C. Applicable Statutes and Regulations

The Federal Agriculture Improvement and

Reform Act of 1996, 7 U.S.C. § 7201 *et seq.*, allowed producers on farms with wheat, corn, barley, grain, sorghum, oats upland cotton and rice crop acreage bases the opportunity to enter into PFCs. The Market Loss Assistance program allowed producers eligible for PFCs to receive MLA payments. However, as a prerequisite to receiving payments under these programs a landowner must meet the eligibility requirements. When a landowner leases his land, he is eligible to receive PFC and

MLA payments as outlined in 7 C.F.R. §

1412.202(a) The relevant language provides that an owner of a farm is "eligible to enter into a contract [if he or she]. . . (a) assumes all or part of the risk of producing a crop."

7 C.F.R. § 1412.202(a). 7

C.F.R. § 1412.303(a)(5) provides that "If the lease is a cash lease, the landlord is not eligible for a contract payment." The applicable regulations define a cash lease as follows: "if the lease provides for only a guaranteed sum certain cash payment, or a

fixed quantity of the crop (for example, cash, pounds, or bushels per acre)." 7

C.F.R. § 1412.303(a)(2). By contrast, a share lease is defined as "a lease [that] contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof." 7 C.F.R.

1412303(a)(3).

D. Agency Determination

The Director determined that plaintiff was ineligible for the program payments because he leased his farmland based on cash leases. Plaintiff's arguments challenging this determination are not persuasive. Plaintiff first argues that because the leases stated that the PFC and MLA payments should be distributed to him "the lease is and should be the final word as to the matter." This is simply not the case. Plaintiff's lease must meet the statutory and regulatory

authority governing program payments and cannot contract around these guidelines. Plaintiff received program payments for farmland that was leased to three separate parties. Each lease contained a set amount plaintiff would receive in dollars for the use of the land. Nowhere in the leases did plaintiff condition the amount of money received on the risk of crop production. Furthermore, other than simply stating the leases speak for themselves, plaintiff has failed to set forth

any legal argument challenging the Director's determination that plaintiff lacked the necessary risk for program eligibility. Next, plaintiff argues that because the USDA allowed him to sign up for the program payments, as a matter of equity he is entitled to the payments based on Mistake. The Director reasoned that relief could be available if the producer relied on, and took action based on, information from an agency representation that was false. But here there is no

evidence in the record, nor does plaintiff point to any facts in the record that support an argument that he believed he was entitled to the program payments due to information given to him by an agency representative. Furthermore, as the government points out, plaintiff is trained in the law and therefore should have the ability to review the relevant legal authority and draft a farm lease that complied with this authority. Plaintiff failed to do so. Therefore, based on a

review of the relevant statutory and regulatory program guidelines and the Administrative Record, the director's determination was not arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law. Plaintiff's remaining arguments are difficult to decipher but relate to the valuation of his property and his status with the Nebraska State Bar. These issues are not relevant to the Agency decision in this case and do not raise relevant issues of

fact or law.

E. Leasees

A review of the record shows that the leasees were served with process in these proceedings. However, the plaintiff raises no claims against them and they have asserted no claims in this case. Therefore, they are dismissed from this litigation.

CONCLUSION

Based on a review of the administrative record and the filings by the parties, the court finds and concludes that the agency's

determination was not arbitrary or capricious, abuse of discretion, or otherwise not in accordance with the law, and finds in favor of the defendants and against the plaintiff.

IT IS ORDERED:

1. That summary judgment is granted in favor of defendants (Filing No. 41) and against plaintiff (Filing No. 33).
2. Plaintiff's motion to allow additional time to file a reply brief (Filing No. 46) is denied as moot.

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Date Filed: 12/11/2006 Page 35 Addn A5

2. A separate judgment will be entered.

DATED this 11th day of December, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

Chief United States District Judge

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
NEBRASKA

JAMES WIDTFELDT, and JAMES
WIDTFELDT TRUST,

Plaintiffs,

v.

MICHAEL JOHANNNS, in his capacity as

Secretary of the United States

Department of Agriculture, UNITED

STATES DEPARTMENT OF

AGRICULTURE, MONTE FLETCHER, in

his official capacity as Holt County

Executive Director of the United States

Farm Service Agency, an Agency of the

United States Department of Agriculture,

RICHARD KILMURRY, BONNY

KILMURRY, HILGER BROTHERS

PARTNERSHIP, GARY A. BURIVAL,

JOYCE A. BURIVAL, and EDWIN

BURIVAL,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on plaintiff James Widtfeldt's Motion for a New Trial, Amendment of Judgment (Filing No. 49).

Because there was never a trial in this case, the court presumes that plaintiff meant to file his motion as a motion for reconsideration. The court has carefully reviewed plaintiff's motion and Affidavit (Filing No. 50) and concludes that the motion to reconsider is without merit.

Therefore, plaintiff's motion is denied.

IT IS ORDERED:

1. That plaintiff's motion for a New Trial, Amendment of Judgment (Filing No. 49) is denied; and

2. The Clerk of Court is directed to send a copy of this Memorandum and Order to plaintiff at his last known address.

DATED this 4th day of January, 2007.

BY THE COURT:

s/Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge

1Ed Schafer has been appointed to serve as
the Secretary of the United States
Department of Agriculture, and is
substituted as an appellee pursuant to
Federal Rule of Appellate Procedure 43(c).
United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-1284

James Widtfeldt; James Widtfeldt *

Trust, *

*

Appellants, *

* Appeal from the United States

v. * District Court for the

* District of Nebraska.

Ed Schafer,¹ in his capacity as Secretary *

of the United States Department of *

[UNPUBLISHED]

Agriculture; United States Department *

of Agriculture; Monte Fletcher, in his *

official capacity as Holt County *

Executive Director of the United States *

Farm Service Agency, an Agency of *

the United States Department of *

Agriculture; Richard Kilmurry; Bonny *

Kilmurry; Hilger Brothers Partnerships; *

Gary A. Burival; Joyce A. Burival; *

Edwin Burival, *

*

Appellees. *

Submitted: August 29, 2008

Filed: September 4, 2008

Case: 07-1284 Page: 1 Date Filed:

09/04/2008 Entry ID: 3467204

2The Honorable Joseph F. Bataillon, Chief

Judge, United States District Court
for the District of Nebraska.

Before WOLLMAN, SMITH, and
GRUENDER, Circuit Judges.

PER CURIAM.

James Widtfeldt appeals the district court's
adverse grant of summary judgment in this
action for declaratory and injunctive relief
under the Administrative Procedure Act
(APA), 5 U.S.C. § 706(1) & (2), challenging
an order of the United States Department

of Agriculture (USDA), which found him ineligible for federal farm subsidies for the years 2000 and 2001 and required him to refund approximately \$29,000 in payments he received for those years. Upon *de novo* review, we agree with the district court that the USDA's decision was not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the law. See *Voyageurs Nat'l Park Ass'n v. Norton*, 381 F.3d 759, 763 (8th Cir. 2004) (appellate standard of review and applicable legal standard under APA).

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Appn A7

Accordingly, the judgment of the district
court is affirmed. See 8th Cir. R. 47B.

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/2008 Entry ID

**UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

No: 07-1284 James Widtfeldt and James
Widtfeldt Trust, Appellants v. Michael
Johanns, in his capacity as Secretary of the
United States Department of Agriculture,
et al., Appellees

Appeal from District of Nebraska -

Omaha

(8:05-cv-00049-JFB)

ORDER

the United States Department of
Agriculture; Richard Kilmurry; Bonny
Kilmurry; Hilger Brothers Partnerships;
Gary A. Burival; Joyce A. Burival; Edwin
Burival, Defendants - Appellees

Appeal from District of Nebraska - Omaha
(8:05-cv-00049-JFB)

JUDGMENT

This appeal from the United States District
Court was submitted on the record of the
district court and briefs of the parties.

After consideration, it is hereby ordered
and adjudged that the judgment of the
district court in this cause is affirmed in
accordance with the opinion of this Court
September 04, 2008 Order Entered in
Accordance with Opinion: Clerk, U.S.
Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Case: 07-1284 Page: 1 Date Filed:

09/04/2008 Entry ID: 3467206

APPENDIX A10 Relevant Statutory
Provisions Page 1

Administrative Procedures Act 5 USC

§§706(a)(2), page 4 of Petition for Certiorari

Public Law 48-496, April 1948 enabling
legislation for Lab 257, see page 44, and at
page 16 of Petition for Certiorari

Appendix A5, Dec. 11, 2006 Memo and
Order laws:

7 U.S.C. §§ 7211-7212 (2002), and 7 C.F.R.

§1412.201 (a) (2002) Annual Market

Assistance Payments

7 U.S.C. § 1421 PFP payments and Market

Loss Assistance programs.

Note at appendix 5, page 11, that the copies

of leases of Burivals were not signed by

Widtfeldt, as there was more to the

agreement than those given, and all the

original agreements had been delivered to

the FSA prior to any payments being made.

Notwithstanding the agreements, the

subsequent bankruptcies reversed the risk

of loss to Widtfeldt, as provided in the

defaults provision of the agreements, and

Widtfeldt in fact lost all pay and all crops

due to various shenanigans in the BK 07-

42271 and 42273 bankruptcy cases of
Burivals, establishing risk of loss on
Widtfeldt.

Note that at appendix a5, page 12,
the local FSA pretended not to have the
leases on November 19, 2003, and then re-
opened the eligibility, even though the
leases (the originals) were required by the
FSA to be delivered prior to any payments
being made.

7 U.S.C. §6912(e) Exhaustion of remedies.

28 U.S.C. §§ 1331, 7 U.S.C. §6999, and 28

U.S.C. § 2201 give Jurisdiction to the US

District Court.

7 U.S.C. § 7201 Federal Agricultural

Improvement and Reform Act of 1996,

allowed PFC contracts

7 C.F.R. §1412.202(a), and uC.F.R. §

1412.303(a)(5), quoted on page 26, that "if

the lease is a cash lease, the landlord is not

eligible for a contract payment", where a

cash lease is a "lease providing for only a

guaranteed sum certain cash payment, or a

fixed quantity of the crop". In this case,

the lease relied on default provisions of

liens on the crop, and the "guarantee" did

not exist, the renters filed bankruptcy and never paid. Even the Widtfeldt lien on the crop, a highest lien because it was filed while the crop was in the field, was unavailing of any pay. Latest reports suggest the bankrupts expect to pay no more than 5 percent of the lien amount on the crop, showing conclusively that Widtfeldt has and always did have the risk of loss on the crop.